



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

September 17, 1991

Mr. J. Robert Giddings
The University of Texas System
Office of General Counsel
210 West Seventh Street
Austin, Texas 78701

OR91-417

Dear Mr. Giddings:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252- 17a, V.T.C.S. Your request was assigned ID# 12270.

You have received from a student a letter requesting copies of documents existing in his nonacademic file, general university information, including university regulations, building plans, and student statistics, and regulations of the university that govern police "undercover" operations. You do not object to releasing much of the requested information; however, you maintain that the student's nonacademic file is excepted from required public disclosure by sections 3(a)(1), 3(a)(14), and 14(e) and that requested information relating to university police policy which reveals its strategy for investigation and detection of criminal activities is excepted by section 3(a)(8) of the Open Records Act.

You have forwarded to us for review the student's nonacademic file, which primarily includes items related to an investigation of harassment brought against him by other students, a university police department memorandum which lists the operational policies which the department wishes to keep from public view, and copies of those policies.

We have considered the exceptions you claimed and have reviewed the documents submitted to us. Previous open records decisions resolve your request. Section 14(e) states:

Nothing in this Act shall be construed to require the release of information contained in education records of any educational agency or institution except in conformity with the provisions of the Family Educational Rights and Privacy Act of 1974, as enacted by Section 513 of Public Law 93-380, codified as Title 20 U.S.C.A. Section 1232g, as amended.

V.T.C.S. art. 6252-17a, § 14(e).

Title 20 of the United States Code section 1232g(a)(1)(A) states in part: "If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material." You assert that those students who have complained by way of written statements wish to maintain the confidentiality of their statements and have not consented to the release of such. Many of the statements are handwritten and release of such would tend to identify the students who wrote them. *See* Open Records Decision No. 224 (1979). The release of the other statements would tend to identify the students who wrote them because of the nature of the complaints and because of the relatively small number of students to whom the information involved could be applicable. *See* Open Records Decision No. 294 (1981). Although the statements include information related to the student requester and such statements are maintained in the student requester's file, release of the requested information would allow that student to identify information relating to other students who have not consented to its release. Accordingly, the complaints and statements contained in the nonacademic file, undated notes made by Dean Hardy relating to complaints made against the student requestor, and severable information, as marked, which reveals the identity of students other than the requester may be withheld under section 14(e). The memorandum from Professor Hacker, however, must be released because it is a student record and does not contain information which identifies students other than the student requesting the information about himself.

The materials submitted to us for review also include Dean Hardy's handwritten notes relating to the student requestor and to the complaints made against

written notes relating to the student requestor and to the complaints made against him. These notes generally correspond to meetings between Dean Hardy and the student requester and constitute Dean Hardy's account of these meetings (notes dated February 27, October 8, and October 16, 1990). These notes, except as marked, make no reference to any students other than the requestor. Title 20 of the United States Code section 1232g(a)(4)(B)(i) does not include within its definition of "education records":

records of instructional, supervisory, and administrative personnel and educational personnel ancillary there to which are in the sole possession of the maker there of, and which are not accessible or revealed to any other person except a substitute.

Information maintained solely by Dean Hardy and revealed to no one except as provided by 20 U.S.C. 1232g(a)(4)(B)(i) does not fall within the definition for "education records" and may not be disclosed. However, if these notes have been revealed to others, then they do not fall within the above exception and must be disclosed.


You claim that some of the information requested which relates to police policies is excepted by section 3(a)(8) because release of such would reveal police strategy for investigation and detection of criminal activities on university property. Section 3(a)(8) excepts from required public disclosure "records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime." Open Records Decision No. 531 (1989) at 3, held that police policies regarding the use of force were excepted under section 3(a)(8) because release of such "could impair an officer's ability to arrest a suspect or protect the public peace." The police policies submitted reflect the department's guidelines for police officers confronted by violence or threatened violence when affecting an arrest or protecting the public safety. Accordingly, those policies may be withheld under section 3(a)(8). Portions of police policies, however, which restate generally known common-law rules, constitutional limitations, or Penal Code provisions must be released. Open Records Decision No. 531 (1989). Additionally, any information contained in these policies which has previously been publicly disclosed, must be released. See Open Records Decision No. 436 (1986). For your convenience we have marked those portions of the police policies which must be released.

Because case law and prior published open records decisions resolve your

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a published open records decision. If you have questions about this ruling, please refer to OR91-417.

Very truly yours,

A handwritten signature in cursive script that reads "Susan Garrison".

Susan Garrison
Assistant Attorney General
Opinion Committee

SG/GK/lb

Ref.: ID# 12270

cc: Raphael Raphlah, M.D., M.P.H.
3101 N. MacGregor # 23
Houston, Texas 77004